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7 SANRIO COMPANY, LTD. and
SANRIO, INC.

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SANRIO COMPANY, LTD., a Japanese) Civil Action No. C 07-05024 VRW
corporation and SANRIO, INC., a)
12 California corporation,)
13 Plaintiff,)
14 vs.)
15 TORRI BUTLER TORRES, a North)
Carolina state resident and POSH.LIFE, an)
16 unincorporated entity, dba POSH-)
LIFE.COM, POSHLIFEBEAUTY.COM,)
17 and POSHLIFEBLING.COM, and DOES)
1- 10,)
18 Defendants.)
19

This is an action to redress violations of the federal trademark laws, 15 U.S.C. §1114, et seq., federal copyright laws, 17 U.S.C. § 501, et seq., federal laws of unfair competition, 15 U.S.C. §1125(a) et seq., as amended, California state law of unfair competition, Cal. Bus. & Prof. Code § 17200 et seq., and common law unfair competition, as the result of allegedly willful and unauthorized use by Defendants of Sanrio's famous HELLO KITTY character name, trademark and copyrighted artwork.

26 Defendants to date are proceeding *pro se*, and to date have not filed an Answer or other
27 responsive pleading. Plaintiffs' counsel initially contacted Ms. Torres to seek her participation in

1 a joint case management statement. However, it became apparent that Ms. Torres could not
2 meaningfully participate in preparing a joint statement. Plaintiffs believe it is not prudent to file a
3 joint statement under these circumstances. Plaintiffs' counsel have suggested several times to
4 Defendant Ms. Torres that she hire counsel. The parties have engaged in limited settlement talks.

5 Given the posture of the case, Plaintiffs suggest that the Case Management Conference be
6 continued for ninety days.

7 1. Jurisdiction and Service:

8 This Court has subject matter jurisdiction over Plaintiff's claims under and pursuant to 28
9 U.S.C. §§ 1331 and 1338. This court has supplemental jurisdiction over Plaintiff's claims
10 pursuant to 28 U.S.C. § 1337. Venue in the Northern District of California is proper pursuant to
11 28 U.S.C. § 1391(b), § 1392 and § 1400(a).

12 On October 11, 2007, Plaintiffs served Defendants with all appropriate documents
13 including the summons, complaint, and order setting the Case Management Conference and
14 ADR deadlines. Defendants have confirmed their receipt thereof. No parties remain to be served.

15 2. Facts:

16 Plaintiff Sanrio Co., Ltd. is a Japanese corporation. Since 1960, Sanrio Co., Ltd. has been
17 engaged in the business of manufacturing, distributing and selling products for use by children
18 and young adults. Plaintiff Sanrio, Inc. is a wholly owned subsidiary of Sanrio Co., Ltd. located
19 in South San Francisco, California. Since 1976, Sanrio, Inc. has been the exclusive United States
20 distributor of the products of Sanrio Co., Ltd. and is currently the exclusive United States master
21 licensee of the rights in and to the SANRIO trademarks and copyrights.

22 Sanrio Co., Ltd. created the famous HELLO KITTY character. Since 1976, most of
23 Sanrio's merchandise has displayed the HELLO KITTY name and design on the products and
24 product packaging. Sanrio Co., Ltd. owns over 30 U.S. copyright registrations for artwork
25 depicting HELLO KITTY, as well as numerous U.S. trademark registrations for the name
26 HELLO KITTY and the design mark comprising the face of HELLO KITTY. HELLO KITTY is
27 one of the most popular children's characters. Sales in the U.S. alone of Sanrio's genuine

1 HELLO KITTY character merchandise exceeded \$400 million last year. Sanrio's HELLO
2 KITTY products are frequently knocked-off by counterfeiters. Sanrio expends significant
3 resources policing infringers.

4 Plaintiffs believe that Defendant Torri Butler Torres is a North Carolina resident. She is
5 the sole proprietor of Defendants Posh.Life, <posh-life.com>, <poshlifebeauty.com>, and
6 <poshlifebling.com> (collectively, "Posh.Life"). Posh.Life is an internet-based business which
7 manufactures, displays and sells personal accessories decorated with crystals (commonly known
8 as "bling") online.

9 In May 2006, Plaintiffs (collectively, "Sanrio") became aware that Posh.Life, through its
10 own websites well as through some third-party sites, was displaying and offering for sale various
11 counterfeit HELLO KITTY cell phone and PDA covers as well as offering customization
12 crystalizing services featuring HELLO KITTY designs. Sanrio, though its counsel, sent a cease
13 and desist letter to the California and North Carolina addresses listed in the domain name
14 registrations for the Posh.Life websites. Sanrio also sent take-down notices under the Digital
15 Millennium Copyright Act, 17 U.S.C. § 512(c) ("DMCA"), to Internet service providers (ISP)
16 which, to the best Sanrio could determine, were hosting the Posh.Life websites, including
17 Yahoo!. Ms. Torres responded, stating that pages featuring the HELLO KITTY items in question
18 had been removed from the Posh.Life website and would not be put up again. Yahoo! responded
19 with a form email message stating that appropriate action would be taken.

20 About one month later in July, 2006, Sanrio became aware that Posh.Life continued to
21 display and offer for sale the various unauthorized HELLO KITTY cell phone and PDA covers
22 and related customization services. Sanrio sent another cease and desist message to Ms. Torres
23 by email, as well as a second DMCA take-down notice to Yahoo!. Ms. Torres responded by
24 acknowledging that the unauthorized HELLO KITTY items were still displayed, but asserted that
25 Defendants no longer offered them for sale. Sanrio again told Ms. Torres that continued
26 unauthorized display of these items constituted infringement, and again demanded their removal.
27 Yahoo! responded to the second DMCA notice with another form email message stating that

1 appropriate action would be taken.

2 A month later, in July 2006, Sanrio became aware that the unauthorized HELLO KITTY
3 items and customization services remained on the Posh.Life websites. Sanrio attempted to send
4 another cease and desist letter to Defendants at their California address. The letter was returned
5 with an indication that the California address was no longer valid. Sanrio continued to monitor
6 the Posh.Life websites for approximately a month and determined that Ms. Torres continued and
7 had seemingly expanded the infringing activities to include customization services for more
8 items. In August 2006, Sanrio sent a follow-up cease and desist letter to Ms. Torres, and a third
9 DMCA take-down notice to Yahoo!. Ms. Torres responded, again stating that she no longer
10 offered for the items for sale and asserted that she intended to remove all unauthorized images of
11 the infringing and/or counterfeit HELLO KITTY items. Yahoo! responded to the third DMCA
12 take-down notice with another form email message stating that appropriate action had been
13 taken.

14 In September 2006, Sanrio determined that Posh.Life was offering at least seven
15 counterfeit HELLO KITTY items and/or related customization services, ranging in price between
16 \$165.00 and \$650.00. Sanrio attempted to make a purchase of representative samples through
17 the Posh.Life website. Sanrio's representative received an email response from Ms. Torres
18 stating that Posh.Life was not permitted to make HELLO KITTY items and that such items
19 should have been removed from the site. Sanrio continued to monitor the Posh.Life websites
20 through the end of September 2006, and determined that Ms. Torres had seemingly ceased the
21 infringement.

22 However, in June 2007, Sanrio became aware that Posh.Life was again displaying and
23 apparently offering for sale an expanded selection of at least nineteen counterfeit crystalized
24 HELLO KITTY items, including baby pacifiers covered in rhinestones that clearly presented a
25 choking hazard. In August 2007, Sanrio confirmed that Ms. Torres was continuing to sell and
26 ship counterfeit HELLO KITTY items via online orders, including a rhinestone-covered baby
27 pacifier sold to Sanrio's representative within the Northern District of California. Sanrio also

1 determined that the Posh.Life websites were apparently being hosted by different ISP's. Sanrio
2 sent DMCA take-down notices to the new ISPs. One ISP responded that it had notified their
3 customer and she had removed the disputed images. However, at least one image of a HELLO
4 KITTY item remained on the Posh.Life websites.

5 Around this same time, Sanrio discovered that Ms. Torres had been displaying an image
6 of a counterfeit HELLO KITTY item as the signature image on her blog site, apparently since at
7 least January 11, 2007. The blog includes a link to the Posh.Life websites. Sanrio also discovered
8 that Ms. Torres was displaying images of her counterfeit HELLO KITTY items on the online
9 auction sites eBay and iOffer. Sanrio sent DMCA take-down notices to the ISP for the blog site
10 and the auction sites. To date, the infringing images appear to have been removed from those
11 third-party sites. In light of the above pattern of repeated postings, this lawsuit was filed to
12 prevent continued infringements.

13 In her correspondence with Plaintiffs, Ms. Torres contends that she has actually sold only
14 two HELLO KITTY items, and that she did not make those items; rather she had purchased them
15 from a third party vendor on eBay. Ms. Torres further asserts that she has destroyed the
16 remaining HELLO KITTY items in her possession; that she does not have any sales records, and
17 that she cannot get access to the sales records for her Posh.Life store while it was hosted by
18 Yahoo! Plaintiffs have evidence discrediting Mr. Torres' claims. Plaintiffs believe that Ms.
19 Torres has made and sold numerous unauthorized HELLO KITTY items despite repeated cease
20 and desist letters.

21 3. Legal Issues:

22 Plaintiffs allege that Defendants' unauthorized display, offering for sale and sale of the
23 crystalized HELLO KITTY products and customized crystalizing services constitutes willful
24 infringement of the Sanrio's copyright, trademark and trade dress rights in the HELLO KITTY
25 name and image, in violation of federal copyright law and federal and state trademark law, and
26 federal and state laws of unfair competition. Ms. Torres asserts that the infringement was not
27 willful.

1 4. Motions:

2 No motions have been filed to date. Plaintiffs request that the court set an appropriate
3 deadline for such filing in consideration of Defendants' *pro se* status, and anticipate a motion for
4 default judgment in the event Defendants fail to file a responsive pleading. Plaintiffs anticipate
5 filing a motion for summary judgment following limited discovery.

6 5. Amendment of Pleadings:

7 Defendants have not timely filed an Answer or other responsive pleading. At this time,
8 Plaintiffs do not anticipate a need to amend the pleadings. Depending upon the nature of
9 Defendants' responsive pleading, Plaintiffs may want to amend. Also, recognizing that
10 information obtained during discovery may uncover potential new issues or parties, Plaintiffs
11 may want to amend to add new defendants.

12 6. Evidence Preservation:

13 Plaintiffs and their counsel have discussed preservation of electronic and non-electronic
14 evidence.

15 7. Disclosures:

16 In light of Defendants' current *pro se* status and failure to appear, the parties have not yet
17 exchanged initial disclosures.

18 8. Discovery:

19 No discovery has been taken to date. Plaintiffs do not anticipate a need to limit or modify
20 discovery rules. In light of Defendants' current *pro se* status and failure to appear, the parties
21 have not yet met and conferred pursuant to Fed. R. Civ. P. 26(f).

22 9. Class Actions:

23 Not applicable.

24 10. Related Cases:

25 Plaintiffs are not aware of any related cases.

26 11. Relief:

27 Plaintiff seeks the following relief:

1 A. Injunctive relief: enjoining Defendants from manufacturing, displaying, offering
2 for sale or selling any items bearing the HELLO KITTY name or image, or otherwise using the
3 HELLO KITTY name or mark; otherwise infringing any of Plaintiffs' copyrights or trademarks;
4 otherwise competing unfairly with Plaintiffs; and requiring Defendants to deliver up for
5 destruction all infringing products, and other matter employed in the manufacture, distribution
6 and sale of infringing products.

7 B. That Defendants be required to pay Sanrio: Defendants' profits from the
8 infringements, together with interest thereupon in an amount presently unknown; Sanrio's
9 damages in an amount presently unknown but believed to be at least \$150,000, together with
10 interest; statutory damages in an amount not more than \$1,000,000 per counterfeit mark, as
11 provided under and pursuant to 15 U.S.C. §1117(c); three times the profits and damages
12 pursuant to 15 U.S.C. § 1117(b); and statutory damages in the amount of \$150,000 per copyright
13 infringement, the maximum allowable as provided under and pursuant to 17 U.S.C. § 504(c), as
14 amended.

15 C. That Defendants be required to pay Sanrio the costs of this action, together with
16 Sanrio's reasonable attorneys' fees, under 17 U.S.C. 505 and 15 U.S.C. §1117(a).

17 12. Settlement and ADR:

18 The parties have engaged in some settlement discussions. Plaintiffs do not believe
19 Defendants' factual assertions regarding the scope of infringing sales are credible. Plaintiffs need
20 to obtain accurate records of Defendants' sales in order to determine an appropriate settlement
21 amount. It appears that Plaintiffs will need to subpoena Yahoo! for such records.

22 Plaintiffs consent to court-ordered mediation.

23 13. Consent to Magistrate:

24 Plaintiffs consent to have a Magistrate Judge conduct all further proceedings including
25 trial and entry of judgment.

26 14. Other References:

27 Not applicable.

1 15. Narrowing of Issues:

2 Plaintiffs believe the issues can be narrowed or completely resolved by dispositive
3 motions once limited discovery has been conducted.

4 16. Expedited Schedule:

5 Plaintiffs prefer that the case not be handled on an expedited basis in order to allow time
6 for settlement negotiations.

7 17. Scheduling:

8 Plaintiffs request the following schedule, with the understanding that adjustments may be
9 requested if rendered necessary by timing of the mediation or other matters that may impact
10 scheduling:

11 Fact discovery cut-off: August 15, 2008

12 Expert disclosure: September 19, 2008

13 Rebuttal expert reports due: October 17, 2008

14 Expert discovery cut-off: November 14, 2008

15 Dispositive motions hearing: January 17, 2008

16 Trial: March 31, 2009, or two months after the court rules
17 on dispositive motions, or at a date thereafter as
18 convenient to the Court's calendar

19 18. Trial:

20 The case will be tried to a jury. Plaintiffs anticipate a one-week trial.

21 19. Disclosure of Non-party Interested Entities or Persons:

22 Pursuant to Civil L.R. 3-16, Plaintiffs certify that as of this date, other than the named
23 parties, there is no such interest to report.

24 20. Other Matters:

25 Not applicable.

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1 OWEN, WICKERSHAM & ERICKSON, P.C.
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3

4 Dated: December 26, 2007

5 By /ljk/
6 Noel M. Cook
7 Linda Joy Kattwinkel

8 Attorneys For Plaintiff,
9 SANRIO COMPANY, LTD. and
10 SANRIO, INC.

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CASE MANAGEMENT ORDER
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29 IT IS SO ORDERED.

30 Dated: _____

31 By _____
32 HONORABLE VAUGHN R. WALKER
33 Chief Judge, U.S. District Court
34 Northern District of California

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37 S:\1Clients\SANRI\LITIGA\70014-PoshLife\CMCstatement.wpd
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CERTIFICATE OF SERVICE

I, Jill K. O'Hara, am employed in the City & County of San Francisco, State of California, am over the age of eighteen; and not a party to this action. My business address is 455 Market Street, 19th Floor, San Francisco, California 94105.

I am readily familiar with the business practice at my place of business for processing of correspondence and documents by mail with the United States Postal Service, by overnight delivery through an overnight service, by personal delivery through a courier service, by facsimile, and/or by email.

On the date below, I served the following document(s):

PLAINTIFF'S CASE MANAGEMENT STATEMENT

on the person(s) listed below:

Ms. Torri Butler Torres
Posh.Life
3449 Singleleaf Lane
Raleigh, NC 27616

admin@poshlifebeauty.com
poshlifebling@gmail.com

X BY U.S. MAIL: Such correspondence was deposited, with postage fully prepaid, with the United States Postal Service at San Francisco, California, on the same day in the ordinary course of business.

— BY OVERNIGHT DELIVERY: Fully prepaid on the same day in the ordinary course of business.

BY PERSONAL SERVICE: Such envelope was delivered by hand to the offices of the addressee.

BY FACSIMILE: Such document was faxed to the above-identified facsimile number. Upon completion of the transmission, the transmitting machine issued a transmission

X BY EMAIL: The document was transmitted via email in the form of .pdf attachment or other readable document.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 26, 2007 at San Francisco, California.

Jill K. O'Hara
Jill K. O'Hara